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UNITED STATES DISTRICT COURT
FOR DISTRICT OF NORTHERN CALIFORNIA

VLADIMIR A. BALAREZO, individually and
on behalf of others similarly situated

Case No.: C07-05243 JF

Plaintiff,
vs.

NTH CONNECT TELECOM INC., AND
STEVEN CHEN,

Defendants

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL:**

1). Violation of California Labor Code §1194;
2). Violations of The Fair Labor Standards Act
(Non-payment of overtime); 3). Violation of
Labor Code §226.7; 4). "Waiting Time"
Penalties under California Labor Code §203;
and 6). For Restitution of Unpaid Wages in
Violation of California Unfair Trade Practices
Act under Business and Professions Code §
17203

Plaintiff, Vladimir Balarezo, on his own behalf and on behalf of others similarly situated,
allege as follows:

NATURE OF CLAIM

1. This is a class action on behalf of putative members who had been employed on
piece rate basis by NTH Connect Telecom Inc. ("NCT") during the last four years of the filing of
this Complaint, seeking damages arising out of their employer's failure to pay overtime as
required by the Fair Labor Standards Act ("FLSA") and the California Wage Orders and statutes.
On their own behalf and on behalf of other similarly situated others who fall with the relevant
statutory periods, Plaintiffs seek compensatory damages for unpaid wages under California
Labor Code and Wage Orders, liquidated damages under 29 U.S.C. §216(b), damages under

1 California Labor Code §226.7 for failure to provide meal and rest periods, waiting time penalties
2 under California Labor Code § 203, and attorney's fees, costs, pre judgment interest pursuant to
3 California Labor Code § 1194(a) and 29 U.S.C. § 216(b), and restitution under California Unfair
4 Trade Practices Act under California Business and Professions Code § 17203.

5 **PARTIES**

6
7 2. Plaintiff Balarezo was employed with Defendant NCT for sometime during last
8 four years.

9 3. Defendant NCT is a California corporation engaged in the business of property
10 maintenance services and landscaping in San Jose, California.

11 4. The individual defendant Steven Chen, according to information and belief, is the
12 owner and the CEO of NCT, having control over the work conditions and situation of Plaintiff
13 and putative class member employees at the NCT.

14 **SUBJECT MATTER JURISDICTION AND VENUE**

15 5. Subject matter jurisdiction of this action of this Court is based upon Fair Labor
16 Standards Act, 29 U.S.C. §§201 *et. seq.* and the pendant jurisdiction of this Court.

17 6. This Court is a proper venue, since all events giving rise to the claims of the
18 named plaintiff and the putative class members.

19 **PLAINTIFFS' CLASS ACTION ALLEGATIONS**

20 7. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil
21 Procedure 23(a) and (b)(3) on behalf of all those who had been employed on piece rate basis by
22 Defendant with respect to the claims alleged herein arising under California Labor Code, and
23 California Business and Professions Code §17200, *et. seq.*

24 8. Plaintiff also brings this action on behalf of such class members pursuant to 29
25 U.S.C. §216(b) with respect to unpaid overtime and liquidated damages arising under Fair Labor
Standards Act, 29 U.S.C. § 201, *et. seq.*

9. The members of the purported class or subclass are so numerous that joinder of all

1 members is impracticable. According to information and believe, NCT had employed a large size
2 of piece rate workforce. While the exact number of class or subclass members is unknown to
3 plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes
4 that there are at least one hundred or more members in the proposed class. Members of the class
5 or subclass may be identified from payroll and time records maintained by NCT, and may be
6 notified of the pendency of this action by mail, or other appropriate media, using the notice
7 similar to that customarily used in the wage and hours class actions.

8 13. Plaintiff's claims are typical of the claims of the members of the class and subclass
9 as all members of the class and subclass are similarly affected by defend ants' wrongful conduct
10 in violation of federal and state laws governing labor standards that is complained of herein .

11 14. Plaintiff will fairly and adequately protect the interests of the members of the class
12 and subclass and have retained counsel competent and experienced in wage and hour litigation.

13 15. Common questions of law and fact exist as to all members of the class and
14 predominate over any questions solely affecting individual members of the class. Among the
15 questions of law and fact common to the class and subclass are:

16 (a) whether the federal and state wage hours laws were violated by defendants' acts as
17 alleged herein;

18 (b) whether defendants have properly paid all putative class members for the hours that
19 were worked in excess of 8 hours a day or 40 hours a week;

20 (c) whether the NCTis liable for failure to pay the subclass members whose employment
21 terminated during the last three years the overtime ages owed ascertainable at the time of
22 termination of their employment;

23 (d) to what extent the members of the class and subclass have sustained damages and the
24 proper measure of damages.

25 16. A class action is superior to all other available methods for the fair and efficient
adjudication of this controversy since joinder of all members is impracticable. Furthermore, as
the damages suffered by individual class and subclass members may be relatively small, the

1 expense and burden of individual litigation make it impossible for members of the class to
 2 individually redress the wrongs done to them. There will be no difficulty in the management of
 3 this action as a class action.

4 **SUBSTANTIVE ALLEGATIONS**

5 10. Plaintiff Balarezo was employed on piece rate by NCT for some period during
 6 last four years.

7 11. During last four years, Plaintiffs and other hourly paid employees worked over 8
 8 hours a day and forty hours a week from time to time.

9 12. Plaintiff and such other piece rate employees were not subject to any exemptions
 10 from overtime pursuant to the Fair Labor Standards Act and California Labor Code.

11 13. Within 72 hours of termination of Plaintiff Balarezo and other piece rate
 12 employees, NCT willfully failed to pay them overtime owed, the amount of which was readily
 13 ascertainable at the time of termination.

14 **COUNT ONE**

15 *Violation of California Labor Code, Non Payment Of Overtime*

16 *Labor Code Sections §510*

17 14. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-13 as if fully
 18 stated herein.

19 15. During last four years, Plaintiff and other piece rate employees' employment was
 20 subject to California Labor Code Sections 1194 and 510, and the applicable Wage Orders
 21 promulgated by the California Industrial Welfare Commission pursuant to Labor Code Section
 22 1173, which required all employees to be paid overtime for work performed in excess of forty
 23 hours per week or eight hours per day, unless specifically exempted by the law.

24 16. During their employment with the defendants, Plaintiff and other piece rate
 25 employees regularly worked at NCT in excess of forty hours per week and in excess of eight
 hours per day. Plaintiffs received only straight time from NCT for these overtime hours.

17. During last four years, NCT knowingly caused, suffered and permitted Plaintiff

1 and other piece rate employees to regularly work in excess of forty hours per week and eight
2 hours per day without paying them one and one half, or double of their regular rate of pay.

3 18. By not paying overtime wages in compliance with the state law, NCT violated
4 Plaintiff and other piece rate employees' rights under the law, specifically California Labor Code
5 Section 1194.

6 19. As a direct and proximate result of NCT's failure to pay proper wages under the
7 California Wage Orders, Plaintiff and other piece rate employees incurred general damages in
8 the form of lost overtime compensation in amounts to be proven at trial.

9 20. Defendants had been aware of the existence and requirements of the California
10 Labor Code Sections 510 and 1194 and the Wage Orders, and willfully, knowingly and
11 intentionally failed to pay Plaintiffs and other piece rate employees the overtime compensation
12 due to them at the time their employment ended.

13 21. Plaintiff was required to retain attorneys for the purpose of bringing this action
14 and are entitled to an award of attorney's fees and pre-judgment interest pursuant to California
15 Labor Code Section 1194(a).

16 WHEREFORE, Plaintiff prays for judgment as set forth below.

17 **COUNT TWO**

18 *Violation of The Fair Labor Standards Ac,*

19 *29 U.S.C. Section 201, et seq.*

20 22. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-21 as if fully
21 stated herein.

22 23. At all relevant times herein, Plaintiff and other piece rate employees' employment
23 was subject to the provisions of the Fair Labor Standards Act of 1938, as amended ("FLSA"), 29
24 U.S.C. Section 201, *et seq.* and the Plaintiff and other piece rate employees were individual
25 employees covered by FLSA because Plaintiff and other piece rate employees' employment
directly related to interstate instrumentality and NCT is an enterprise engaged in interstate
commerce.

1 if fully restated hereinafter.

2 31. At all relevant times herein, Plaintiff and other piece ate employees' employment
3 with NCT was subject to the provisions of California Labor Code § 226.7, which requires the
4 employer to provide employees a thirty-minute meal break for every five hours worked, unless
5 expressly exempted.

6 32. During Plaintiff and other piece rate employees' employment with NCT, Plaintiff
7 and other piece rate employees worked at least 8 hours a day, and were not provided any meal
8 periods as required by law.

9 33. For each time that Plaintiff and other piece rate employees were not provided the
10 required meal period, Plaintiff and other piece rate employees are entitled to recover one
11 additional hour of pay at each employee's regular rate of compensation pursuant to California
12 Labor Code section 226.7.

13 34. Plaintiff and other piece rate employees are therefore entitled to payment, in an
14 amount to be proved at trial for additional pay for each meal period that Defendant NCT failed to
15 provide.

WHEREFORE, Plaintiff prays for judgment as set forth below.

16 **COUNT FOUR**

17 *Penalty for Failure to Pay Wages at Termination*

18 *California Labor Code Sec. 203*

19 35. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-34 as if fully
20 stated herein.

21 36. Within 72 hours of the termination of Plaintiff failed to pay him the overtime
22 wages owed ascertainable at the time of termination. Plaintiff believes that during the last three
23 years, it has been the practice of NCT not to pay its employees the overtime time after they were
24 terminated.

25 37. Failure to pay proper wages at an employee's termination as required by Labor
Code §201 subjects the employer to penalties provided for in Labor Code Section 203, up to 30

1 days of wages.

2 38. As of this date these wages have not been paid to Plaintiff and the other piece rate
3 employees whose employment ended during the last three years, thus making NCT liable to
4 Plaintiff and other employees whose employment terminated in last three years for penalties
5 equal to 30 days wages in amount to be proven at trial.

6 WHEREFORE, Plaintiff prays for judgment as set forth below.

7 **COUNT FIVE**

8 *For Restitution of Unpaid Overtime Wages*
9 *in Violation of California's Unfair Trade Practices Act*

10 *Business and Profession Code § 17203*

11 39. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-38 as if
12 fully stated herein.

13 40. At all times relevant herein, the employment with NCT was subject to California
14 Labor Code and applicable Wage Orders promulgated by the California Industrial Welfare
15 Commission as well as FLSA, all of which required all employees to be paid overtime for work
16 performed in excess of forty hours per week or eight hours per day unless specifically exempted
17 by the law. California law also requires premium pay for missed meal periods.

18 41. During last four years, the employer of plaintiffs, NCT and individual defendant
19 Steven Chen were subject to the California Unfair Trade Practices Act (California Business and
20 Professions Code Section §17000 *et seq.*), but failed to pay the Plaintiff and other piece rate
21 employees overtime pay as required by FLSA, California Labor Code and applicable Wage
22 Orders.

23 42. During the last four years, Defendants NCT and Steven Chen kept to themselves
24 the unpaid overtime and meal period premiums which should have been paid to the Plaintiff
25 and other piece rate employees.

3. Award to Plaintiff and other piece rate employees the meal period premium owed during last four years;

4. Award to Plaintiffs and other hourly paid employee during last four years the pre-judgment interest of 10% on the unpaid overtime compensation and unpaid meal period premium pursuant to California Labor Code §§ 1194(a) & 218.6.

5. Award the Plaintiff and other piece rate employees whose employment ended during last three years the waiting time penalty damages of thirty days wages pursuant to California Labor Code Section 203 in amounts to be proven at trial;

6. Award Plaintiff and other piece rate employees during last four years the restitution of unpaid overtime pay and other wages pursuant to California Business and Professions Code §17203 in amounts to be proven at trial;

7. Enter a permanent injunctive order against Defendants ensuring the compliance with the FLSA and California Labor Code and wage orders;

8. For reasonable attorney's fees pursuant to California Labor Code §1194(a) and 29 U.S.C. §216(b) of the FLSA;

9. Award Plaintiffs the costs of suit herein.

10. Grant such other and further relief as the Court may deem appropriate.

Dated: October 12, 2007

DAL BON & WANG
ADAM WANG

By: /s/ ADAM WANG
Attorney for Plaintiff
Vladimir Balarezo